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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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**GOVERNMENT NOTICE**

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**SOUTH AFRICAN REVENUE SERVICE**

No. R. 180

1 March 2005

**NOTICE SETTING OUT ARRANGEMENTS FOR PURPOSES OF SECTION 76A(1)(a) AND SECTION 76A(1)(b) OF THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962)**

By virtue of the power vested in me by paragraphs (a) and (b) of the definition of "reportable arrangement" in section 76A(1) of the Income Tax Act, 1962 (Act No. 58 of 1962), I, Trevor Andrew Manuel, Minister of Finance, hereby give notice in—

- (a) Schedule A hereto, of arrangements which have been identified as not being likely to lead to an undue tax benefit; and
- (b) Schedule B hereto, of arrangements which have certain characteristics that have been identified as being likely to lead to an undue tax benefit.

**T. A. MANUEL**  
**MINISTER OF FINANCE**

**SCHEDULE A**

1. In this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned.

2. Subject to the provisions of Schedule B and paragraph 3, the following have been identified as arrangements which are not likely to lead to any undue tax benefits (hereinafter referred to as "excluded arrangements"):

- (a) any loan, advance or debt in terms of which—
  - (i) the borrower receives an amount of cash and agrees to repay at least the same amount of cash to the lender at a determinable future date;or

- (ii) the borrower receives a fungible asset and agrees to return an asset of the same-kind and of the same or equivalent quantity and quality to the lender at a **determinable future date**;
- (b) any lease;
- (c) any transaction undertaken through an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004);
- (d) any transaction in participatory interests in a scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).

3. Paragraph 2 applies only to an excluded arrangement referred to in that paragraph which—

- (a) is undertaken on a stand-alone basis and is not directly or indirectly connected to, or directly or indirectly dependent upon, any other arrangement (whether entered into between the same or different parties); or
- (b) is an arrangement that would have qualified as having been undertaken on a stand-alone basis in terms of paragraph 3(a), were it not for a connected arrangement that is entered into for the sole purpose of providing security and no tax benefit is obtained or enhanced by entering into such security arrangement,

provided such excluded arrangement is not entered into—

- (i) with the main purpose of obtaining or enhancing a tax benefit; or
- (ii) in a specific manner or form with the main purposes of obtaining or enhancing a tax benefit.

## SCHEDULE B

1. In this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned.

2. The following have been identified as arrangements which have certain characteristics which are likely to lead to an undue tax benefit:

- (a) any arrangement which would have qualified as a hybrid equity instrument as defined in section 8E of the Income Tax Act, 1962, if the prescribed periods in that section had been five years; or
- (b) any arrangement which would have qualified as a hybrid debt instrument as defined in section 8F of the Income Tax Act, 1962, if the prescribed periods in that section had been five years.

3. Paragraph 2 does not apply in respect of any instrument listed on an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004).